



FREDERICK COUNTY PLANNING COMMISSION

December 13, 2017

TITLE: **Libertytown Garden
Mixed Use Development**

FILE NUMBER: **SP-13-18, AP#17799 (APFO#17801, FRO
#17800)**

REQUEST: **Site Development Plan Approval**
The Applicant is requesting Site Development Plan reapproval for a mixed use structure to include 14 residential condominium units and 2,479 s.f. of commercial/retail space on a 0.89-acre property.

PROJECT INFORMATION:

ADDRESS/LOCATION: Located on the north side of Main Street (MD 26) at the western terminus of North Street in Libertytown
TAX MAP/PARCEL: TM 51; Parcel 123
COMP. PLAN: Mixed Use Development
ZONING: Mixed Use (MX)
PLANNING REGION: Walkersville
WATER/SEWER: W-1; S-1

APPLICANT/REPRESENTATIVES:

APPLICANT: Frall Developers, Inc.
OWNER: - same -
ENGINEER: VanMar Associates, Inc.
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Denis Superczynski, Principal Planner II

RECOMMENDATION:

Conditional Approval

ATTACHMENTS:

Exhibit 1 – Site Plan Rendering
Exhibit 2 – APFO LOU
Exhibit 3 - Modification Requests (previously approved in December 2014)

STAFF REPORT

ISSUE

Development Request

The Applicant is requesting Site Development Plan reapproval for a mixed use project consisting of fourteen (14) residential units and 2,479 s.f. of commercial/retail use in a single structure on a 0.89-acre site (the "Site"). A nearly identical site plan for this parcel was approved by the FCPC on December 10, 2014 and the Applicant is seeking re-approval of the plan with a minor modification to the location and form of an on-site water tank.

Modification Requests previously granted by the FCPC include:

1. Allow for increased illumination on the western and northern portions of the Site (*unchanged*)
2. Allow for an increase of 17 parking spaces above the 31 required spaces (*unchanged*)
3. Allow for fewer than the two (2) required street trees along MD 26 (*unchanged*)
4. Allow for a reduction in the side yard setback. (*unchanged*)

The proposal includes a single structure, 3+ stories in height, with commercial/retail uses and two residential units on the first floor and six residential units on each of the remaining two levels. The primary proposed uses are being reviewed as: general commercial retail land uses under the heading of *Commercial Uses – Retail and Commercial Uses – Business and Personal Services* (specific users have not been identified for the commercial/retail portion of the project, therefore several headings in the Use Table may apply); and, multi-family dwellings under the heading of *Residential Uses* per §1-19-5.310 Use Table in the Zoning Ordinance. All proposed uses are principal permitted uses in the MX Zoning District subject to Site Development Plan approval.

Additionally, this Site Development Plan proposal has been reviewed under the *Multiple structures and mixed uses* ("Mixed Uses") provisions of §1-19-7.520(H)(1) of the Zoning Ordinance which permits multiple principal uses within a single structure with a finding from the Planning Commission that the listed criteria of that section have been met.

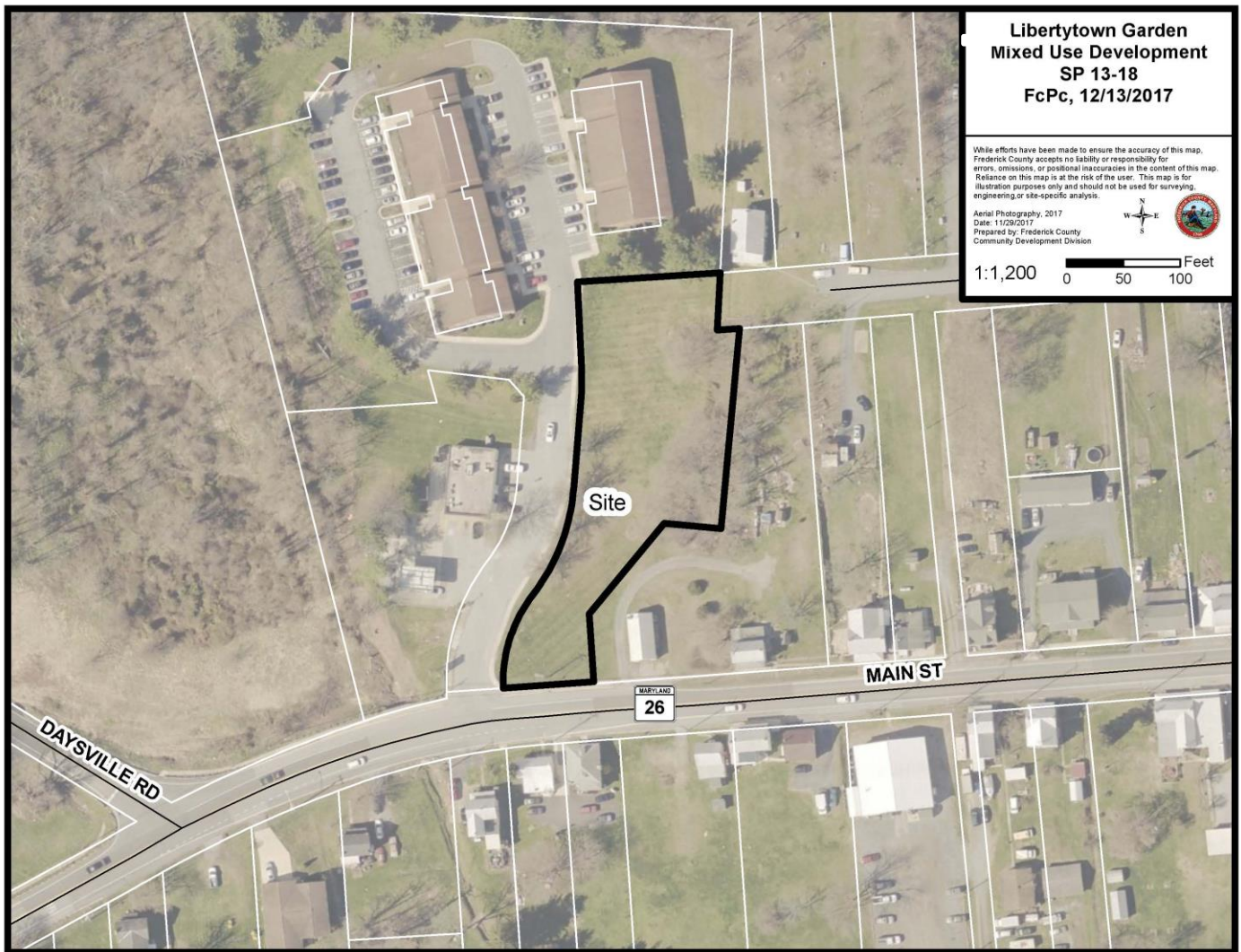


Figure 1: Site Vicinity Map – Aerial Image

BACKGROUND

Development History

In January 1988, the Planning Commission approved a modification to allow the three lots of Parcel 123 – which include the 7-Eleven convenience store (Lot 1), the two existing condominium buildings (Lot 2), and the proposed condominium structure (Lot 3) – to share the common entrance onto MD 26. The June 1992 Condominium Plat illustrates the two existing buildings and identifies Lot 3 as being “Reserved for Expansion” showing a proposed condominium building and associated parking area in the area of this current proposal.

Previously zoned Village Center (VC), the subject Site was rezoned to Mixed Use (MX) in September 2012.

As required by Zoning Ordinance §1-19-7.520(I) this project received Concept Site Development Plan approval from the Planning Commission on May 14, 2014.

On December 10, 2014, the Applicant received conditional approval from the FCPC, with final stamped signature sets approved February 15, 2015. With the Site Plan approval for this project set to expire on December 10, 2017, the Applicant is returning to the Planning Commission seeking approval for a plan

which is substantially identical to the previously approved application, differing only in the movement of the water tank from a below-ground structure located west of the proposed building to an above-ground tank located to the rear (north) of the mixed use structure.

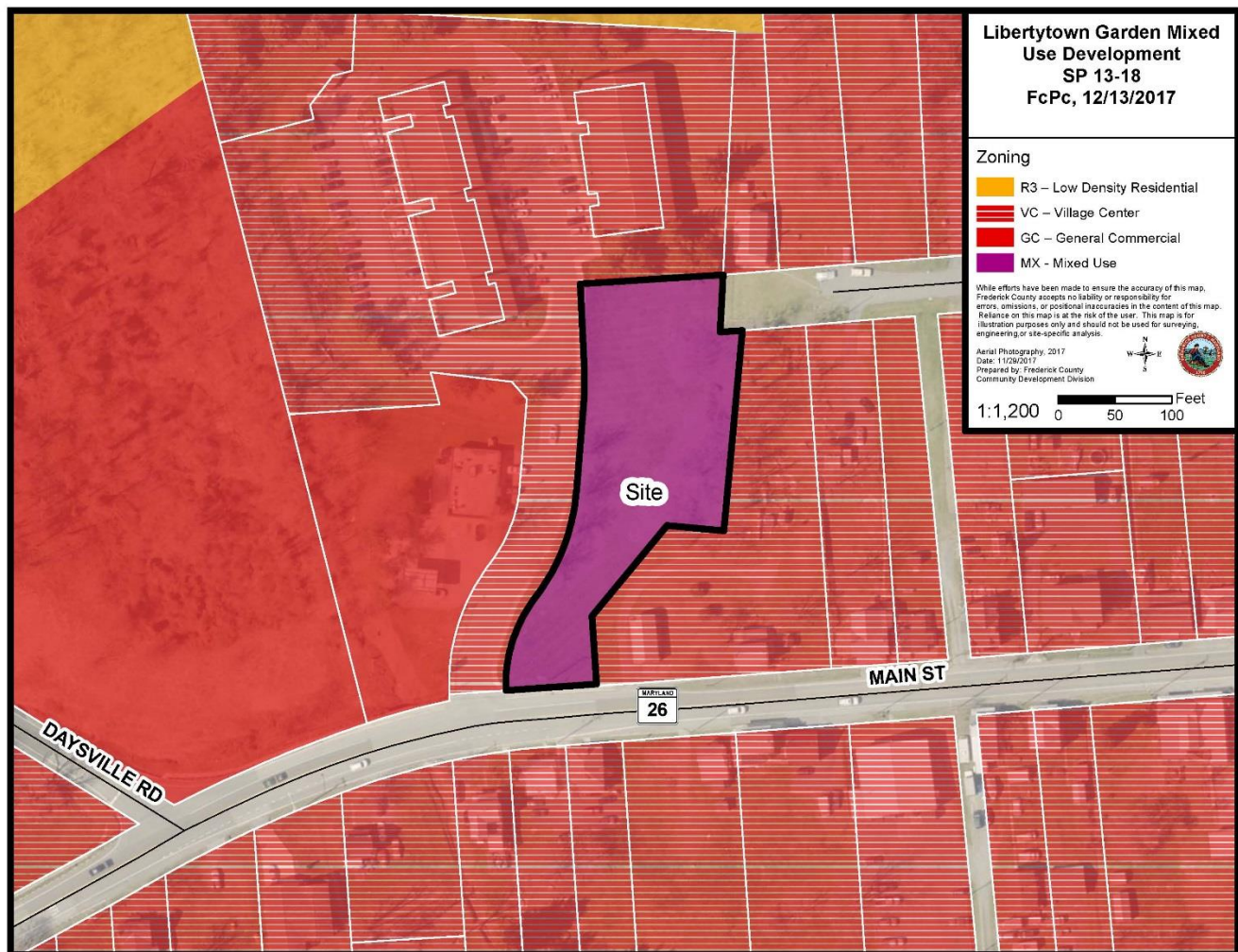


Figure 2: Site Vicinity Map – Zoning

Existing Site Characteristics

The Site is currently vacant with a small wooded area located along the eastern boundary of the lot. No wetlands or FEMA floodplain areas exist on the Site. A row of street trees lines a portion of the western boundary along the shared driveway serving the convenience store, the two existing condominium buildings, and the subject parcel. The Site also has several utility easements, ranging in width from 20-30 feet, for water/sewer lines crisscrossing the Site.

Surrounding Land Uses:

To the north of the Site are the two existing, 2-story condominium buildings with a total of 36 units (SP-88-08). To the west is the 7-Eleven convenience store and gas station. Both uses share the common drive onto MD 26 which forms the southern edge of the subject Site. The surrounding neighborhood in Libertytown is primarily residential in character, though a small church is located on North Street to the east of the Site. A small, off-site garage building is located on an intervening lot between the subject Site and MD 26.

The proposed project site is situated adjacent to the Libertytown Survey District (Maryland Inventory of Historic Places #F-8-63) and its development as described in this application would have no adverse effect on contributing historic structures in the vicinity.

ANALYSIS

Summary of Development Standards Findings and Conclusions

The key issues associated with this site plan include:

- Layout and location of the proposed above-ground water tank
- Vegetative screening of the parking areas and review of the alternate planting design

Mixed use development is encouraged in the MX district through the allowance of a mixture of land uses within a single structure or within multiple structures on a site. Multiple principal uses within a single structure, as proposed by the Applicant, are permitted in the MX district (Sect. 1-19-7.520) when approved by the Planning Commission via the Type I Site Plan Review process (Sect. 1-19-3.300 through 1-19-3.300.4). Approval of the Concept Site Plan (and the subsequent Site Plan) by the Planning Commission in 2014 permits the Applicant to move forward with this Type I Site Plan Review.

The proposed residential density of this Site Development Plan is 15.8 DUs/acre.

Non-residential density in the MX district is not limited explicitly other than by practical site, circulation, design, and dimensional regulations.

Detailed Analysis of Findings and Conclusions

Site Development Plan Approval shall be granted based upon the criteria found in §1-19-3.300.4 Site Plan Review Approval Criteria of the Frederick County Zoning Ordinance.

Site Development §1-19-3.300.4 (A): *Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized through such means as building placement or scale, landscaping, or screening, and an evaluation of lighting. Anticipated surrounding uses shall be determined based upon existing zoning and land use designations.*

Findings/Conclusions

1. **Dimensional Requirements/Bulk Standards:** The Zoning Ordinance establishes differing dimensional standards for commercial and multi-family residential uses in the MX District.

In §1-19-6.100 the dimensional standards for *commercial* structures in the MX district are established. The proposal meets these minimum standards as follows:

Maximum Height Allowed:	60 ft.
Maximum Height Proposed:	49 ft.
Front Yard Required:	20 ft.
Front Yard Provided:	68+ ft. (measured to point where lot attains maximum width)
Rear Yard Required:	35 ft.
Rear Yard Provided:	66 ft.
Side Yard Required:	8 ft.
Side Yard Provided:	20 ft. (west side)

Side Yard Provided: 31 ft. (east side)

Dimensional standards for *multi-family residential* structures in the MX District are as follows:

Maximum Height Allowed:	60 ft.
Front Yard Required:	20 ft.
Rear Yard Required:	<i>Equal to the height of the structure (49 ft.)</i>
Side Yard Required:	<i>Equal to the height of the structure (49 ft.)</i>
Lot Area Per DU (minimum):	2,700 sf (37,800 sf required for 14 DUs)
Lot Area Provided:	38, 842 sf

The proposed building height of 49 feet is within the allowable range established by the Zoning Ordinance (60 feet maximum). The structure, as proposed, is unable to meet the side setback requirement (for a multi-family residential use) on the building's east and west sides since the building height of 49 feet exceeds the available side yards of 31 feet and 20 feet respectively. Due to the odd shape and configuration of the parcel, the Applicant is proposing to site the structure as shown on the Site Plan, including technically insufficient side yard setbacks. Under section 1-19-7.520(G) of the Zoning Ordinance, the Planning Commission may modify the development standards - including dimensional standards - in the MX District. Staff is satisfied that the proposed orientation and placement of the building on this oddly configured Site represents a reasonable effort to minimize negative impacts on surrounding properties while accommodating the functional requirements necessary to gain approval for the development. Staff recommends re-approval of the request to modify the side yard setback requirements.

2. **Signage §1-19-6.300:** The Applicant is not proposing any signage in this Site Development Plan. Future requested signage for identification or directional purposes will be subject to the sign requirements of the Zoning Ordinance and will be subject to a Sign Permit prior to construction/installation.
3. **Landscaping §1-19-6.400:** The landscaping plan contains a modest variety of plant species, which provide screening, shade, and attempts to blend the new landscaping with some of the existing trees and shrubs on the adjacent site while maintaining adequate distance from utility easements and ESD facilities. The addition of the 10 ft. tall above-ground water tank on the northeastern corner of the site does not affect the planting plan as originally approved since the proposed vegetative screen is sufficient to diminish the visual impact of the tank structure. The 'Winter's Star' Camelia shrubs proposed as evergreen screening near the tank are capable of attaining a height of between 6-10 feet.

Street Trees

Staff would support the reapproval of the alternate planting design – which provided for three river birch trees to be planted along the internal drive in substitution for two required street trees that would interfere with proposed SWM facilities along MD26 - as originally approved by the FCPC.

Land Use Buffering and Screening

Buffering of surrounding residential land uses is largely accomplished through the establishment of new plantings, but is also dependent on existing landscaping on this and adjacent properties. Parking areas will be screened adequately, with the amendments noted in the previous paragraphs. An opaque fencing material must be used [Section 1-19-6.400(G)] in place of the chain link material on the eastern side of the Site along the proposed retaining walls.

Parking Area Landscaping

Planting areas bracketing the parking bays are planted adequately given the constraints of the existing and planned utility easements serving this and adjacent sites. As proposed, the planting

area trees provide canopy cover (warm season shade) to approximately 25% of the parking areas and roughly 30% of the entirety of paved driving surfaces on the Site.

4. **Lighting §1-19-6.500:** The lighting plan is used primarily to provide illumination of the internal circulation network in this proposal. The Applicant proposes the use of 14-ft tall, conventional, downward-casting, pole- and building-mounted light fixtures. The photometric plan submitted as part of the Site Development Plan application shows several areas along all sides of the Site where illumination levels appear to exceed 0.5 foot candles (fc). Staff would recommend that the Planning Commission reaffirm its previous granting of the modification of the lighting standards to permit these increased illumination levels *only* on the northern and western sides of the Site.

Transportation and Parking §1-19-3.300.4 (B): *The transportation system and parking areas are adequate to serve the proposed use in addition to existing uses by providing safe and efficient circulation, and design consideration that maximizes connections with surrounding land uses and accommodates public transit facilities. Evaluation factors include: on-street parking impacts, off-street parking and loading design, access location and design, vehicular, bicycle, and pedestrian circulation and safety, and existing or planned transit facilities.*

Findings/Conclusions

1. **Access/Circulation:** Access to the Site is proposed from the existing 28-foot wide driveway/private stop sign controlled access that also serves the convenience store and existing condominiums. This private driveway will be reconstructed as necessary along the Site's frontage to provide two access points into parking areas as well as eight parking spaces along the west side of the building.

There is an existing sidewalk along MD 26 and along the eastern side of the driveway that will be maintained up to the first parking lot entrance. New sidewalks will be provided on the western side of the building to access the building and the proposed parking areas. The new sidewalks will maintain access to the existing condominiums.

The Applicant has demonstrated that the Site can meet the vehicular and pedestrian access requirements as established by the Zoning Ordinance and other relevant codes and standards.

2. **Public Transit:** The Site is not currently served by public transit.
3. **Parking:** Section 1-19-6.220 of the Zoning Ordinance:

Multi-Family Residential Use – 1 space/unit plus 0.5 spaces/bedroom = 21 spaces

Commercial Use – 1 space per 250 s.f. floor area = 10 spaces

Proposed Parking Spaces – 48 spaces

In accordance with requirements for uses within the MX district, the proposed parking has been located to the side or rear of buildings where possible. The location and orientation of the building on the Site, as well as the mixed use nature of proposal, have dictated to some extent the placement of vehicular parking. Most of the parking is accommodated in what would be considered the front yards of the lot in order to maintain the first floor commercial units with front-facing exposure to MD 26. The rear (north side) of the structure thus becomes the primary access for those occupying the residential units. While proposed parking remains in the front yards, side yard parking bays provide 13 of the required 21 spaces necessary to meet the code requirement

for the residential use (1.5 spaces per dwelling unit). The Site Plan reflects 48 parking spaces within the development distributed as follows:

Residential spaces required	21 spaces
Commercial spaces required	10 spaces
Additional spaces provided	17 spaces
TOTAL PROPOSED	48 spaces
TOTAL REQUIRED	31 spaces
Surplus Spaces provided	17 spaces

Most of the surface parking spaces are physically located in areas that allow for easy and convenient sharing between uses. Furthermore, the likely staggering of peak usage between the commercial/retail uses, and residential uses will likely result in a parking plan more than adequate to meet the needs of the Site as proposed. Given the lack of available safe and convenient alternate public parking in the vicinity as well as the proposed use of permeable paving for parking areas and aisles on the Site, Staff has no objection to the reaffirmation of the proposed modification of parking standards to permit 48 spaces where 31 spaces are required.

Loading Spaces

A large loading space is identified on the eastern side of the building and would primarily serve the commercial/retail uses as well as those moving into and out of the residential units. This loading space meets the minimum requirement of Section 1-19-6.210 of the Zoning Ordinance.

4. **Pedestrian Circulation and Safety §1-19-6.220 (G):** The Applicant has provided sidewalks surrounding the proposed building and is proposing appropriate connections on the west side of the building to the existing sidewalk that parallels the private access road. All sidewalks provided are a minimum of 5 feet in width.
5. **Bicycle Parking §1-19-6.220 (H):** The Applicant has provided for bicycle parking as follows in accordance with the Zoning Ordinance:

Multi-family residential (1 rack per 10 dwelling units; minimum of 2 racks)

Required: 2 bike racks Provided: 2 bike racks

Commercial (none required; less than 5,000 s.f.)

Required: 0 bike racks Provided: 1 bike rack

Public Utilities §1-19-3.300.4 (C): *Where the proposed development will be served by publicly owned community water and sewer, the facilities shall be adequate to serve the proposed development. Where proposed development will be served by facilities other than publicly owned community water and sewer, the facilities shall meet the requirements of and receive approval from the Maryland Department of the Environment/the Frederick County Health Department.*

Findings/Conclusions

1. **Public Water and Sewer:** The Site is to be served by public water and sewer infrastructure and is classified W-1/S-1 in the Frederick County Water and Sewerage Plan. The previously approved underground water tank serving the site has been moved to the northeastern corner of the property where it will be constructed as an above-ground tank. The Site is subject to the Libertytown Garden APFO LOU. The APFO LOU is valid for 3 years from the date of Planning Commission approval and, if approved, will expire on December 13, 2020.

Natural features §1-19-3.300.4 (D): *Natural features of the site have been evaluated and to the greatest extent practical maintained in a natural state and incorporated into the design of the development. Evaluation factors include topography, vegetation, sensitive resources, and natural hazards.*

Findings/Conclusions

1. **Topography:** The Site drops approximately 25 feet in elevation from north to south with the steepest slope at the far northeastern edge of the parcel where a retaining wall will be constructed to accommodate the development grading of the area.
2. **Vegetation:** Most of the Site is vacant and covered with turf grass and a few shrubs.
3. **Sensitive Resources:** The Site is within a Wellhead Protection Area and all proposed land uses are subject to the provisions of section 1-6-50 of the Frederick County Code. The Zoning Ordinance provides that specific land uses are prohibited within Wellhead Protection areas. There are no sensitive resources located on site that are negatively affected and unmitigated under this development proposal.
4. **Natural Hazards:** There are no natural hazards located on site that are affected by the development proposal.

Common Areas §1-19-3.300.4 (E): *If the plan of development includes common areas and/or facilities, the Planning Commission as a condition of approval may review the ownership, use, and maintenance of such lands or property to ensure the preservation of such areas, property, and facilities for their intended purposes.*

1. **Proposed Common Area/Open Space:** The Zoning Ordinance in § 1-19-7.520 (H)(1)(c) requires 363 s.f. of common plaza/green area per 2,000 s.f. of gross floor area. The project will include 16,119 s.f. of floor area, which would require 2,925 s.f. (approximately 0.07 acres) of green space. The Plan proposes 0.31 acres (13,680 s.f.) of green space including an area on the west side of the proposed building that could be used as a common area for gardens, dog-walking, yard sales, etc.

The majority of the green space provided in the Site Plan is located on the far southern end of the Site along MD 26. The commercial front of the building (facing MD 26) provides a modest paved area (720 s.f.) which could serve as a plaza area. The green space on the western side of the building could also serve as a common plaza. Although the green area is somewhat disbursed and therefore not ideal in its location, the Applicant has attempted to address this standard given the inherent constraints of existing and required site utility easements and lot shape configuration.

Site Development §1-19-7.520: *In accordance with the site plan review process provided in Sections 1-19-3.300 through 1-19-3.300.4, the following provisions shall be applicable in the Mixed Use (MX) District.*

- **Storage and Operations/Refuse and Recycling/Signage –**
 - Commercial activity proposed for the Site demonstrates detailed compliance with this item. All commercial activities will be undertaken within the structure. Outdoor refuse areas are proposed to be screened with opaque fencing material and, in some cases, vegetation.

- ***Conformity with Community or Corridor Plan –***
 - No community or corridor plan has been adopted for the Libertytown community growth area. Generally, the proposal demonstrates adherence to the general principles for compact development outlined in the County's Comprehensive Plan through seeking a mix and intensity of uses conducive to the continuing development of compact neighborhoods in areas generally served by public infrastructure and facilities.
- ***Site Development and Layout –***
 - An effort has been made by the Applicant to ensure that the building faces the public way, primary internal drive, and pedestrian network. While the western façade could be improved to provide a more pedestrian friendly structure, it is clear that the Applicant has focused efforts on the commercial façade. The Applicant is providing overhead shelter at entry points into the building as a benefit to the end user as well as to the aesthetic goals of the design standards in the Zoning Ordinance.
 - Visual screening of undesired views of service facilities and activities has been accommodated in the Plan.
 - The proposed Site Development Plan adequately differentiates between areas of pedestrian access and areas of vehicular movement. The potential vehicular or pedestrian connection to the east acknowledges and plans for future development/redevelopment along North Street.
 - The opportunity for joint- or shared parking is strong. The Applicant has proposed shared spaces serving all uses thus meeting the intent of this standard.
 - The proposed development has been designed around an internal driveway network that is interconnected and facilitates efficient movement through and within the Site.
- ***Building Massing and Bulk –***
 - With no community or corridor plan in effect for the Libertytown community growth area, building massing and bulk are limited only by the underlying zoning regulations. The building is oriented to show its access/entry features to the public or private internal drive or court. The Plan maintains human-scaled architectural elements on the first floor and particularly at entryways.
 - Although specifics regarding materials and finishes have not been provided to Staff, the visualization material submitted generally provides information related to building shape, height, massing and window and door placement. The Applicant has submitted renderings of the structure itself for review by the Planning Commission. The Applicant has made efforts to address the use of traditional architectural forms and materials as they might be applied to this type of structure.
 - The Planning Commission previously confirmed that the Applicant has demonstrated adherence to standard F(3) regarding a primary pedestrian entrance onto a street, square, or plaza. Given the limitations in size, configuration, and orientation of the Site, the FCPC, in its previous approval of the site plan, found that this standard has been met.
- ***Multiple Structures and Mixed Uses –***
 - The proposed uses include a mixture of commercial and residential uses integrated within a single structure. This is an appropriate response to both the zoning of the parcel as well as the surrounding uses in the vicinity. In meeting the standards set forth for design in the MX district, it appears that the specific criteria for this allowance have been met.
- ***Dimensional Regulations (Height and Setbacks) –***
 - In §1-19-6.100 the dimensional standards for Multifamily dwellings in the MX district are established. The proposal meets those minimum standards as detailed earlier in this report.

Findings/Conclusions

Based upon the review and analysis as provided above, Staff agrees with the previous FCPC finding that the proposed application satisfies the Development Standards of the MX zoning district.

Other Applicable Regulations

Adequate Public Facilities Ordinance (APFO) – Chapter 1-20

Schools: The Project is projected to generate 1 elementary school student, 1 middle school student, and 2 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test passes at the elementary, middle, and high school levels.

Water and Sewer: The Property has a water and sewer classification of W-1/ S-1 as shown on the Water and Sewerage Plan Map. DUSWM has provided a finding of conditional approval regarding sewer and water facilities to serve this Project, based upon improvements specified in the attached APFO LOU (Exhibit #2) and as shown on the site plan.

Road Improvements: The Project will generate up to 21 trips during the critical weekday pm peak, which is under the APFO testing threshold per Section 1-20-30. In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per Section 1-20-12(H), the Developer shall pay into the County-held escrow account the following pro rata contribution:

1. Escrow Account No. 4301 for the signalization of the intersection of MD 26 and MD 550. The estimated cost of this improvement is \$300,000. The Developer agrees to pay \$34,342 to the escrow account for this road improvement. This payment shall be made prior to the issuance of any building permit.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on December 13, 2020.

Forest Resource Ordinance (FRO) – Chapter 1-21

This project previously met the FRO requirements under AP 14148 through the purchase of forest banking credits. Upon the submittal of the revised Site Plan application a FRO exemption (AP 17800) was applied for and granted as the proposed changes to the project do not change the mitigation requirement that was provided under the previous FRO application.

Historic Preservation – Chapter 1-23

The proposed condominium building site is situated adjacent to the Libertytown Survey District (Maryland Inventory of Historic Places #F-8-63) and would have no adverse effect on contributing historic structures in the vicinity.

Findings/Conclusions

Based upon the review and analysis as provided above, Staff finds that the proposed application meets the Site Plan review criteria as set forth in §1-19-3.300.4 including items related to site development, transportation, parking, public utilities, natural features, and common areas. Staff will continue to work with the Applicant as the project moves through the remainder of the development process to address any outstanding items as discussed in this Staff Report.

Summary of Agency Comments

Other Agency or Ordinance Requirements	Comment
Public Works Development Review (PWDR):	<i>Conditional Approval</i>
Development Review Planning:	<i>Conditional Approval</i>
State Highway Administration (SHA):	<i>Approved</i>
Street Name Review	<i>Approved</i>
Health Dept.	<i>Conditional Approval</i>
Office of Life Safety	<i>Approved</i>
Traffic Engineering	<i>Conditional Approval</i>
APFO	<i>Conditional Approval</i>
FRO	<i>Approved</i>

RECOMMENDATION

Staff has no objection to conditional reapproval of the Libertytown Garden Mixed Use Development Site Development Plan. If the Planning Commission conditionally reapproves the site development plan, the plan is valid for a period of three (3) years from the date of Planning Commission approval, or until December 13, 2020.

Based upon the findings, conclusions, and modifications as presented in the staff report the application meets or will meet all applicable zoning, APFO, and FRO requirements once the following conditions are met:

1. Address all agency comments as the plan proceeds through to completion.
2. Approval of the modification to allow 48 parking spaces where 31 parking spaces are required by the Zoning Ordinance.
3. Approval of the modification to permit illumination levels exceeding 0.5 fc at certain areas along the northern and western boundary lines as shown on the Lighting Plan.
4. Approval of the modification to provide an alternate planting design allowing fewer than the two required street trees along the MD 26 frontage of the Site.
5. Approval of a modification, per Section 1-19-7.520 (G) of the Frederick County Zoning Ordinance, to allow reduced side yard setbacks on the west and east sides of the proposed structure.
6. Additional Site Development Plan review and approval shall be required in order for any land use other than those identified under the heading of Commercial – Retail or Commercial Business and Personal Services in Section 1-19-5.310 of the Frederick County Zoning Ordinance to occupy the 2,479 sq ft of commercial/retail space on Site. The Site Development Plan review shall include an amended site plan when deemed necessary by Staff.

7. Acceptance by the Planning Commission of the proposed alternate planting design with the condition that at least three of the existing 15"-dbh cherry trees located along the private access road are protected during construction.
8. An opaque fence material shall be substituted for the proposed chain link fencing along the eastern boundaries of the Site.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE** SP-13-18, AP 17799, including APFO approval, **with conditions and modifications** as listed in the staff report for the proposed Libertytown Garden Mixed Use Development, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.



Exhibit 1: Site Plan Rendering

Libertytown Garden Mixed Use Development – Site Plan

December 13, 2017

Page 15 of 20



FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING & PERMITTING
Department of Development Review

Jan H. Gardner
County Executive

Steven C. Horn, Division Director
Michael L. Wilkins, Acting Director

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Libertytown Garden

Site Plan #SP13-18, AP #17801

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and Frall Developers, Inc. (the "Developer"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Libertytown Garden Mixed Use Development Site Plan (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter replaces the Letter previously approved by the Commission on December 17, 2014 and concerns itself with the Developer's 0.892 +/- acre parcel of land, which is zoned Mixed Use (MXD), and located on the north side of Main Street (MD 26) in Libertytown. This APFO approval will be for the development of up to 14 multifamily units and 2,479 sq. ft. of commercial space/use, which is shown on the site plan for the above-referenced Project, which was conditionally approved by the Commission on December 13, 2017.

Schools: The Project is projected to generate 1 elementary school students, 1 middle school student and 2 high school student. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test passes at the elementary, middle and high school levels.

Water and Sewer: The Property has a water and sewer classification of W-1/ S-1 as shown on the Water and Sewerage Plan Map. DUSWM has provided a finding of conditional approval regarding sewer and water facilities to serve this Project, based upon a *Water and Sanitary Sewer Study* dated August 26, 2014 and a memorandum dated October 7, 2014 prepared by VanMar Associates, Inc., including the improvements specified herein and shown on the site plan.

Frederick County: Rich History, Bright Future
30 North Market Street, Frederick, MD 21701 • 301-600-1138 • Fax 301-600-1645
www.FrederickCountyMD.gov

Exhibit 2: APFO LOU

1. Developer shall provide a nitrate removal system at the existing water treatment plant as approved by the DUSWM. This system must be deemed operational prior to building permit issuance.

APFO approval for water and sewer does not guarantee that building permits will be issued. Building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512 *et seq.*, Section 1-16-106 of the Frederick County Code, and all applicable County policies and regulations.

Road Improvements: The Project will generate up to 21 trips during the critical weekday pm peak hour, which is under the APFO testing threshold per Section 1-20-30. In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per Section 1-20-12(H), the Developer shall pay into the County-held escrow account the following pro rata contribution:

1. Escrow Account No. 4301 for the signalization of the intersection of MD 26 and MD 550. The estimated cost of this improvement is \$300,000. The Developer agrees to pay \$34,342 to the escrow account for this road improvement.

Therefore, prior to building permit issuance, the Developer hereby agrees to pay **\$34,342** to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

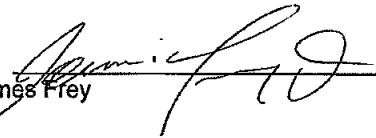
Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on December 13, 2020.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures Next Page]

Page 2
Libertytown Garden LOU

FRALL DEVELOPERS, INC.

By:  11/27/17 Date:
James Frey

FREDERICK COUNTY PLANNING COMMISSION:

By: _____ Date:
Anthony Bruscia, Chair or Carole Sepe, Secretary

ATTEST:

By: _____ Date:
Gary Hessong, Director, Permits & Inspections

Planner's Initials / Date _____

County Attorney's Office Initials / Date _____
(Approved as to legal form)



**VANMAR
ASSOCIATES, INC.**

Engineers • Surveyors • Planners

310 South Main Street, P.O. Box 328, Mount Airy, Maryland 21771

(301) 829-2890
(301) 695-0600

(301) 831-5015

(410) 549-2751
Fax (301) 831-5603

December 2, 2014

Frederick County Department of Permitting and Development Review
30 North Market Street, 3rd floor
Frederick, Maryland 21701
Attn: Denis Superczynski, Principal Planner

RE: Libertytown Garden Mixed Use Development
SP 13-18 (AP# 14589) Site Development Plan

Dear Mr. Superczynski:

The Site Development Plan for the **Libertytown Garden Mixed Use Development (SP 13-18)** proposed for the 0.89-acre Parcel 123 (TM 51) in Libertytown is scheduled to be considered by the Planning Commission at its December 10, 2014 meeting. ***This letter requests modifications of certain site plan criteria established in the Zoning Ordinance and provides a justification statement for these proposed modifications as follows:***

Street Tree Landscaping Requirements:

Section I-19-6.400(A) of the Zoning Ordinance establishes standards for the planting of street trees associated with site development plans. The Ordinance requires that one (1) tree shall be provided per 35 feet of roadway frontage and that an alternate on-site location may be approved by the Planning Commission with the approval of an alternate planting design by the Planning Commission. A total of two street trees are required along the Liberty Road/ MD 26 frontage of the site (80 feet). We request a modification to reduce this number to zero trees along the frontage and instead to provide six (6) trees elsewhere on the site. The landscape plan proposed for the site avoids the placement of trees in close proximity to planned bioretention areas along the parcel frontage. Existing utility easements, as well as the odd shape of the lot, allow for no practical locations for street trees along MD 26.

Lighting Requirements:

Section I-19-6.500(B)(1) of the Zoning Ordinance establishes standards for proposed lighting associated with site development plans. Specifically, the Ordinance requires that no illumination in excess of 0.5 foot-candles (fc) be measured beyond the property boundaries. We request a modification of Section I-19-6.500(B) to permit a modest spillover of light (exceeding 0.5 fc) at several points along the northern and western edges of the site. This

1

Exhibit 3 - Modification Requests (previously approved in December 2014)

Libertytown Garden Mixed Use Development – Site Plan

December 13, 2017

Page 19 of 20



**VANMAR
ASSOCIATES, INC.**

Engineers • Surveyors • Planners

310 South Main Street, P.O. Box 328, Mount Airy, Maryland 21771

(301) 829-2890
(301) 695-0600

(301) 831-5015

(410) 549-2751
Fax (301) 831-5603

additional lighting will illuminate portions of the private access road, sidewalk segments, and parking lot entrance and will not interfere with adjacent residential or commercial properties on the north and west sides of the proposed site.

Dimensional Requirements:

Section 1-19-6.100 of the Zoning Ordinance establishes dimensional requirements based upon the specific zoning district and the proposed use of the property. The Ordinance requires that residential uses in the Mixed Use (MX) District maintain a minimum side yard setback equal to the height of the proposed structure. The proposed mixed use building will measure 49 feet in height thus requiring a 49 ft. side yard setback. Given the physical constraints of the site due to lot configuration, utility easements, and functional circulation requirements, we are proposing a west side setback of 20 feet and an east side setback of 31 feet and are requesting that the Planning Commission modify the requirements per Section 1-19-7.520(G). No adjacent buildings or uses will be adversely affected by the diminished side yards proposed in this site plan.

Parking Requirements:

Section 1-19-6.220 of the Zoning Ordinance establishes standards for the parking of vehicles. Specifically, the Ordinance requires that any deviation from the required number of spaces be approved by the Planning Commission through the modification process. We request a modification of Section 1-19-6.220 to permit an additional 17 parking spaces in excess of the 31 parking spaces required by the Zoning Ordinance. The lack of safe and convenient parking in the vicinity of this proposed mixed use development requires that some additional spaces be made available for both visitors to, and residents of, the building. Pervious pavement will be utilized in the construction of the parking areas which will minimize the negative impact of increased pavement on the site.

We appreciate the consideration by the Planning Commission for the requested approval of these modifications as shown on the Site Plan (SP 13-18; AP 14589). Please contact me if you require additional information regarding this request.

Sincerely,

VANMAR ASSOCIATES

Ronald E. Thompson, PE